

# RULE

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Advanced Television Systems )  
and Their Impact Upon the )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

To: The Commission

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REPLY COMMENTS

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### **SUMMARY OF REPLY COMMENTS**

These reply comments are for the purpose of respectfully asking the Federal Communications Commission (FCC) that my two low power TV stations, and hundreds like them throughout the nation, not be NEEDLESSLY forced off the air during the conversion process to High Definition Television (HDTV). These comments will suggest some alternative ideas not previously suggested by other commenters.

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To: The Commission

**REPLY COMMENTS**

Robert R. Rule, d.b.a. Rule Communications hereby submits his Reply Comments in this proceeding. Rule Communications is the licensee of Low Power Television (LPTV) Stations K39DQ in Cheyenne, Wyoming and also K63EZ in Laramie, Wyoming. Both stations are presently on the air, providing a mixture of network and locally produced programming, of a nature not available through any other local broadcast media, to the public in Southeast Wyoming.

**LOW POWER TV IS WORTH SAVING**

First, let me concur with the numerous comments previously filed, pointing out the many reasons why it is important to save existing Low Power TV stations. Never before in past history am I aware of any instance where the FCC literally wiped out an existing broadcast service. True, LPTV stations operate on a secondary basis to full power TV, but that alone is no reason to NEEDLESSLY force existing stations off the air. The key word in these reply comments will be the word NEEDLESSLY. I do recognize that in some highly populated areas, there simply will not be enough spectrum to permit all existing LPTV stations AND the

addition of second channels for existing full power stations to fit available spectrum space. But, in places like Wyoming, it makes no sense at all to NEEDLESSLY force existing LPTV stations, like mine, off the air.

**THERE IS PLENTY OF SPECTRUM IN RURAL AREAS**

I have been an FCC licensee in various radio services for decades in the state of Wyoming. One thing that I have observed is that there has never been a spectrum shortage in Wyoming. True... it takes a little coordination to find a vacant channel in parts of Wyoming near the Colorado border, but even in these border cities like Cheyenne, space can always be found.

**BUT, REGARDLESS OF SPECTRUM ABUNDANCE, SOMEONE IS ALWAYS WAREHOUSING SPECTRUM OUT HERE IN WYOMING**

It has concerned me deeply to see an abundance of people, usually people who live outside of Wyoming, obtaining licenses within the state of Wyoming, lying to the FCC about the completion of construction, and simply "warehousing" the spectrum... hoping to sell their license to some fat cat some day and make millions of dollars. Although my personal knowledge of this illegal activity is limited to Wyoming, I would safely assume that it goes on all over the United States.

What I have often seen in Wyoming is that license applicants who are unsuccessful in obtaining permits for various different radio services in urban areas, rather than giving up entirely, will obtain licenses in Wyoming... as sort of a "last resort effort" to obtain some kind of license for the service they are interested in. Then, when it comes time to build and operate

their facility, they quickly learn that the population is so low in most parts of Wyoming that they could not possibly make a profit with their proposed operation... be it broadcast, common carrier, or whatever. Although a local "mom and pop" operation might be successful, an out-of-state business operation, run at high inefficiency, simply could not make it financially. So, rather than mail in their construction permit to the FCC for cancellation, they simply lie (falsify, prevaricate, strategically misrepresent... call it what you may) to the FCC, and file a sham application notifying the FCC of completion of the facilities. These people should be put in jail. But... this is getting a bit off the purpose of these reply comments.

Getting back to the situation at hand, in rural areas like Wyoming, the FCC database is clogged with non-existent LPTV stations. To this day, frequent observations made by tuning my television channel dial through all VHF and UHF antenna channels in Cheyenne, Wyoming, has shown me that I am the only LPTV station which is on the air in this community. (There are also no TV translators that appear to be on the air in the Cheyenne, Wyoming area at this time.) Yet, a quick look at the FCC database for LPTV stations will show numerous LPTV stations that are supposed to be on the air in the Cheyenne, Wyoming area! The same is true for Laramie, Wyoming. Although there are legitimate television translator stations on the air in Laramie, Wyoming on TV Channels 3, 8, 10, 12, 57, 59, and 61, in addition to my LPTV station on Channel 63, all the other licensed channels appear to me to be shams!

My best guess is that these other stations may have been filed for with honorable intentions, but the final result is that when the stations were not built, their applicants appear to have lied through their teeth to the FCC. Again, they should all be jailed for perjury.

**THE SHAM LPTV STATIONS IN THE FCC DATA BASE MAKE IT APPEAR NEXT TO IMPOSSIBLE FOR THE FCC TO ASSIGN SECOND CHANNELS FOR FULL POWER TV STATIONS AND OFFER PROTECTION TO LPTV STATIONS IN MANY AREAS.**

It may very well be that the FCC's decision to assign second channels to existing full power in a manner that totally ignores the existence of LPTV stations is based upon the fact that there were simply too many existing LPTV stations out there to possible protect them. Well, especially in rural areas, if the sham stations could be eliminated from consideration, it would be extremely simple to select second channels for full power stations while protecting existing, real, on the air, LPTV stations.

**OK... SO SHORT OF SENDING OUT A TEAM OF FCC INSPECTORS TO IDENTIFY THE SHAM LPTV STATIONS, HOW CAN THIS BE DONE?**

First of all, I think it WOULD be a good idea to identify the sham stations, and prosecute their licensees for perjury. This problem of lying about completion of construction has gotten completely out of hand, and it is high time that some people started going to jail over it, to send a clear message to others that the FCC will no longer tolerate lying. But, short of doing what really should be done, here are some ideas on how to get the job done with far less work... and fewer court trials:

**SEND A FORM LETTER TO ALL LICENSEES OF LPTV STATIONS, AND ASK THEM IF THEY ARE REALLY ON THE AIR.**

A while back, the Mobile Services Division of the Common Carrier Bureau (now the Commercial Radio Division of the Wireless Telecommunications Bureau) of the FCC sent out form letters to licensees of 900 MHz paging stations, and asked them if they were really on the air or not. If they were not on the air, they could simply request cancellation of the authorizations, and no further questions would be asked, and no further action would be taken... other than to cancel the licenses. But, if they were on the air, this division of the FCC simply asked the licensees to provide details of their operation as evidence that they were really on the air. This action apparently resulted in sham operators turning in their licenses. The implied threat was "lie to us one more time, and we're coming after you big time!"

I believe the same thing could be done with LPTV. The FCC could simply send all LPTV licensees a letter, asking them if they are really on the air or not. If they are not on the air, all they have to do is check a box, sign the form, and return it to the FCC, and their license will be considered cancelled, and their record purged from the FCC database. If they fail to respond to two mailings of the letter, their license is also cancelled for failure to respond to official FCC correspondence. But, if the station really is on the air, the licensee could be asked to provide the make, model, and serial number of their transmitter, a photocopy of the invoice for their transmitter, perhaps the same information for their antenna, and perhaps some

evidence that arrangements exist for use of the antenna site shown on the license... such as a copy of the lease or a statement that the licensee owns the site. If the licensee owns the site, perhaps a copy of the property tax bill should be requested. What would happen is that with a very minimal amount of work on behalf of the FCC, the facts could easily be obtained as to which stations are on the air, and which ones are shams. Of course, the sham artists won't admit to lying... they will probably return the form, requesting cancellation of the license, with a marginal note saying something like a decision was recently made to discontinue operations. OK... this is yet another bald faced lie, but at least it gets the sham station out of the data base with minimal effort.

Furthermore, the result of this FCC action should be reported on a public notice, and the public should be given an opportunity to comment on the results. As long as this procedure is clearly noted in the letter which is sent, it should be understood by the sham artists to read: "OK... if you lie once more to the FCC, and claim you are on the air when in reality the owner of the antenna site doesn't even know that you exist, and you have never so much as even seen the antenna site, then your competitors are going to go get sworn affidavits from the site owner that you don't exist, they are going to submit their own sworn affidavits that they have visited the site, taken pictures, and there aren't any antennas whatsoever located at the site you claim that you are using, and this time, you are going to jail... or at least to court!" This threat of perjury prosecution,

initiated by licensees of other competing LPTV stations in the community, should be enough to prevent these fraudulent license holders from continuing to lie to the FCC.

Or, if there simply isn't enough time for the FCC to conduct this "investigation by mail", here is another idea:

**ISSUE A PUBLIC NOTICE, REQUESTING THAT LPTV STATIONS WHICH WISH TO RECEIVE PROTECTION, WHERE POSSIBLE, DURING THE ASSIGNMENT OF SECOND CHANNELS TO FULL POWER TV STATIONS, SO NOTIFY THE FCC.**

My guess is that most of the sham license holders have pretty much lost interest in their venture by now. They have already come to realize that no one is going to pay them millions of dollars for an LPTV license in a place like Chugwater, Wyoming. So, the FCC could issued a Public Notice, requesting that existing LPTV stations that wish to receive protection, where possible, during the assignment of second channels to full power stations simply file a notice or petition or something with the FCC, re-affirming that they are really on the air, under penalty of perjury, and requesting that they receive protection, if possible, during the assignment of second channels to full power stations.

This might not be 100% effective in eliminating the sham stations, but I really think most of them would not bother to file such a petition or notification, re-affirming that they are really on the air, and requesting protection. Under this plan, those who fail to file the notification would not automatically have their licenses revoked, but, they would not be placed in a special data base and be protected during the second channel assignments if and where possible.

**HERE'S A SUMMARY OF THE WHOLE IDEA: DON'T FORCE EXISTING, REAL, ON-THE-AIR, LPTV STATIONS OFF THE AIR IF YOU DON'T HAVE TO!**

It's just that simple. Us little mom and pop operations have invested quite a bit of personal funds to provide broadcast services to our small communities, and it just doesn't make sense for our federal government to put us out of business if there is a way for us to stay on the air on our existing channels! Remember... the cost of changing channels would be extremely significant to us little guys!

**BUT... MAYBE WE SHOULD LOOK AT THE BIG PICTURE, AND COME TO UNDERSTAND THAT LPTV STATIONS ARE REAL TV STATIONS.**

In radio broadcasting, there are 100,000 watt radio stations, and there are 250 watt radio stations. A small town in Wyoming simply could not support a 100,000 watt radio station, and you won't find them in Wyoming's smaller communities... unless their true purpose is to serve a nearby large population center rather than the city of license. But, you will find lots of 1000 watt radio stations all over Wyoming. But, in radio, a radio station is a radio station. High power... low power... it doesn't matter. They are all full power stations, and they are all offered protection on their existing frequencies.

But, television isn't like this. Small rural areas simply cannot support the typical full power TV station that is found in larger cities, and as a result, LPTV is often the only local television broadcast media available to these small communities. Take Laramie, Wyoming... a city of 25,000 people, and the third largest in Wyoming. There is no full power TV station serving Laramie. Despite the appearance of the FCC database, my LPTV

station, K63EZ, is the only one serving Laramie. The city dog pound is working with me to provide video tapes of lost, abandoned, and stray dogs and cats, and I look forward to running their programs. It will permit people in Laramie to see animals available for adoption, and perhaps even to see their own lost pet on television! No out-of-town TV station would run this type of a public service program for the residents of Laramie. And, of course, the sham stations won't run it... since they don't even exist! This leaves my station, K63EZ, as the only available outlet for this type of programming in Laramie. Yet, because my TV station is considered as a "secondary service", I am always and forever threatened with extermination.

So, since we are Laramie's only "real" TV station, maybe we should look at a way to license our station as a "real" TV station:

**A PLAN IS NEEDED TO LICENSE SMALL COMMUNITY TV STATIONS AS FULL SERVICE STATIONS, WITH FULL CHANNEL PROTECTION.**

In FM radio, this would be called a "Class A" FM radio station. We need the same thing in television broadcasting. We need a way to license these small, lower powered, TV stations as "Full Service" stations, and guarantee their continued existence.

Let's look at some ways that this could be done.

**PROVIDE A LICENSE CONVERSION PROCEDURE WHEREBY EXISTING LPTV STATIONS CAN OBTAIN FULL SERVICE TV LICENSES ON THEIR EXISTING CHANNELS.**

Unfortunately, many LPTV stations could not qualify as Full Power TV stations, simply because of their limited power. But, take Laramie for example. My station K63EZ operates with an

effective radiated power of only 838 watts. This is obtained with a 20 watt transmitter, hooked to a directional antenna, aimed at Laramie, located atop a nearby mountain. Almost every antenna viewer in Laramie already has an outdoor UHF antenna aimed at the mountain.... which is how they receive the out-of-town TV stations over the air. But again, my station is being watched, and it is the only local TV station of any type serving Laramie. And, people are watching it with a clear picture and excellent sound.

I feel the engineering parameters required of full power TV stations require too much signal to cover the city of license. Sure, if there are lots of people, it makes sense to cover the city with a signal strong enough to be picked up with an unfolded paper clip as an antenna. But, in more rural areas, the economics of this requirement simply means that the city goes without a full power local TV station. By relaxing the signal strength requirements of full power TV, many existing community TV stations could simply convert their existing facilities to a full power license, which brings me to my next point:

**THERE NEEDS TO BE A PROCEDURE WHEREBY LICENSEES OF LPTV STATIONS CAN CONVERT THEIR STATIONS TO FULL POWER STATIONS, WITHOUT EVERY DOCTOR, LAWYER, AND INDIAN CHIEF IN 12 SURROUNDING STATES DROPPING A COMPETING APPLICATION ON TOP OF THEIR OWN APPLICATION.**

Even if the FCC does not relax the signal strength requirements of full power TV, it is almost next to impossible for existing community TV stations to upgrade their facilities to full power TV on their existing channels without the license mills getting hold of the public information, and then beating

the bushes to flush out every butcher, baker, and candlestick maker that they can find to invest in a "get rich quick" scheme. I get phone calls from friends and associates all the time who have received a telephone call or letter from a license mill, and they tell me with excitement in their voice how, for only a \$10,000 investment, they are going to become the owner of an FCC license which they will be able to sell someday for millions of dollars. I think the operators of these license mills should also be thrown into jail along with the sham license holders, but for now, the FCC needs to at least realize that they are out there, and they pose a serious threat to the small mom-and-pop LPTV station that is trying to scrape together enough money to buy a more powerful transmitter, and upgrade to full power. If they don't upgrade, they may be able to continue to operate indefinitely at low power... as long as they don't lose their channel to a full power station during the HDTV conversion process.

But, if they were to upgrade their power beyond that of a 1000 watt transmitter, they would have to start by petitioning the FCC to add their existing LPTV channel number to the Table of Assignments, and this would open the flood gates to the license mills and their unqualified applicants. So, if a little LPTV station with a 20 watt transmitter, like my Laramie K63EZ, wants to stay in business, it really needs some help from the FCC. If the conversion to HDTV process doesn't take it off the air, then any attempt on my behalf to convert it to full power under the existing rules would most certainly take it off the air with an

avalanche of Dallas, Texas applicants, trying to make a quick buck, having been first deceived by license mill marketing artists. So, right now, it looks like "damned if you do, damned if you don't" when it comes to attempting to protect and preserve your existing family business.

**AND... DON'T FORGET THAT LPTV STATIONS WILL ALSO NEED TO CONVERT TO HDTV SOMEDAY**

In addition to failing to protect, where possible, existing, on-the-air, LPTV stations, the current FCC proposal also fails to provide for a plan for these LPTV stations to convert to HDTV in a manner similar to the full power stations. Again, spectrum is not a problem in rural areas, especially if you clean the data base up by purging the sham stations. But, there needs to be some method whereby existing LPTV stations can request a second channel for HDTV conversion, and again, do so in a manner that they don't have to fight off the multitude of out-of-town "get rich quick" speculators who don't know a Megacycle from a motorcycle!

I think it is very important for the FCC to open a special "filing window" for the sole purpose of awarding second channels for existing LPTV stations, and to do so in a manner whereby the existing LPTV stations can list multiple channel numbers, in preference order, for the FCC to consider in trying to find them a second channel. Or... the choice of a second channel number could be left to the FCC entirely. The point is, to stay alive, these small stations will also have to enter the conversion process, and arrangements need to be made by the FCC

for this to happen without the floodgates of competing applicants being opened upon the existing LPTV stations.

#### **SUMMARY**

LPTV stations are REAL TV stations... assuming that they are actually built and on the air. The FCC rules need to be changed to recognize them as REAL TV stations, every bit as much as a 250 watt Class A FM radio station is also REAL.

Once the data base is cleared of sham LPTV stations, or in the alternative, once a new data base is created of LPTV stations which have specifically requested protection during the assignment of second channels to full power TV stations, the computer program which picks second channels should be told to observe the existence of the real LPTV stations, and offer them protection if and where possible.

Furthermore, the whole idea of treating valuable LPTV stations as "disposable" needs to end. Some procedure, perhaps a one-time conversion filing window, needs to be devised to give these community television stations "real" status. And, while you are at it, you need to also mandate that they be carried by local cable TV systems, who view them as competitors for advertising dollars, and aren't about to carry them on the cable system without being forced to. This would be taken care of if they could be converted easily to a full service status, and defined as being nothing more than a full power TV station, operating with minimal power.

**CLOSING**

As you can no doubt tell, I am sitting at my computer, and composing this text myself. It most likely lacks the polish and dignity of comments prepared by a communications attorney. But, I'm just trying to tell you the way it is out here in Nowhere, Wyoming... and I trust that you will be able to devise a plan which will permit the continuation of a valuable broadcast service to people who would otherwise have to do without. Thank you for the time you have spent studying my comments.

Respectfully submitted,

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